



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

SEP 30 2004

Robert F. Bauer, Esquire
Perkins Coie
607 Fourteenth Street, N.W.
Washington, D.C. 20005-2011

RE: MUR 5390

Dear Mr. Bauer:

On October 22, 2003, the Federal Election Commission notified your client, Ser Inc. d/b/a Galileo Restaurant, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, the Commission, on September 14, 2004, found that there is reason to believe that Ser Inc. d/b/a Galileo Restaurant violated 2 U.S.C. § 441b, a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be

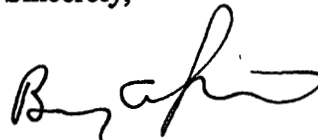
26044133631

demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Tracey L. Ligon, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Smith", with a stylized flourish at the end.

Bradley A. Smith
Chairman

Enclosure
Factual and Legal Analysis

26044133632

1 **FEDERAL ELECTION COMMISSION**
2 **FACTUAL AND LEGAL ANALYSIS**
3
4

5 RESPONDENT: Ser Inc. (d/b/a Galileo Restaurant) MUR 5390
6
7

8 **I. INTRODUCTION**
9

10 Public Citizen filed a complaint with the Federal Election Commission ("the
11 Commission") on October 16, 2003, alleging, *inter alia*, that Robert Mitchell Delk
12 ("Mitch Delk"), Senior Vice President of Government Relations at the Federal Home
13 Loan Mortgage Corporation ("Freddie Mac") between January 1999 and March 2004,
14 made excessive contributions in violation of the Federal Election Campaign Act of 1971,
15 as amended ("the Act"), in connection with fundraising dinners he hosted at Ser Inc.
16 (d/b/a Galileo Restaurant, hereinafter "Galileo") during the 2001-2002 election cycle.
17 The complaint does not make any allegation of wrongdoing with respect to Galileo.
18 However, because Galileo may have violated the Act, Galileo was named as a respondent
19 in this matter and given the opportunity to respond to the complaint.

20 **II. FACTUAL AND LEGAL ANALYSIS**

21 **A. The Fundraising Dinners at Galileo**

22 **1. "The Deal" Between Mitch Delk and Galileo**

23 In 1999, Mitch Delk began sponsoring fundraising dinners at Galileo for the
24 benefit of Members of Congress who served on the House and Senate Committees that
25 oversee Freddie Mac. The approximately 15 dinners held in 1999 and late 2000/early
26 2001 were limited to three courses selected by Galileo, and the charge for the meals was
27 based on "the Restaurant Week menu in which the restaurant charges approximately \$20

26044133633

1 per person for a similar meal.”¹ The fundraising dinners included wine and, therefore,
2 had a higher price of \$25 per person.

3 The fee structure changed in late 2000 or early 2001 to be more favorable to
4 Galileo. Under the new deal, while the three-course meal for \$25 remained the same, Mr.
5 Delk committed in advance to host approximately 25 dinners a year at Galileo during the
6 2001-2002 period and agreed to pay Galileo for a minimum of twenty dinners per event
7 even if fewer than 20 guests actually attended. Under the deal, Mr. Delk was charged a
8 specified flat fee depending on how many people attended the dinner -- \$500 (for 1-20
9 people), \$750 (for 21 to 30 people), and \$1,000 (for 31 to 40 people). The payment
10 schedule was based on a per attendee charge of no less than \$25. Galileo reportedly
11 applied this payment schedule to the approximately 64 dinners hosted by Delk between
12 late 2000/early 2001 and May 2003.

13 **B. Contributions Made by Galileo**
14 **In Connection with the Fundraising Dinners**
15

16 The Act broadly prohibits corporations from making contributions in connection
17 with any Federal election. 2 U.S.C. § 441b(a). The sale of food or beverage by a
18 corporation at a charge less than the normal or comparable commercial rate would be a
19 contribution if: (1) the charge is not at least equal to the costs of such food or beverage to
20 the vendor; (2) the discount on behalf of a single candidate exceeds \$1,000 with respect
21 to any single election; or (3) the discount on behalf of all political committees of each
22 political party exceeds \$2,000 in a calendar year. See 11 C.F.R. § 114.1(a)(2)(v).

23 The information provided in the complaint and the response filed by Galileo

¹ During D.C. Restaurant Week, many of the finest local restaurants offer for approximately \$20 a three-course meal exclusive of beverage, tax and tip, or any items that are not on the Restaurant Week menu. Some restaurants now offer a Restaurant Week-based menu year-round.

1 raises questions as to: (1) whether the amount Galileo charged for the dinners was a
2 normal or comparable commercial rate; and (2) if not, whether the amount of the
3 discounts given by Galileo in connection with the fundraising dinners was within the
4 permissible range provided in 11 C.F.R. § 114.1(a)(2)(v). Galileo claims that it charged
5 Mr. Delk the usual and normal amount for the dinners served, which were based on the
6 Restaurant Week lunch menu that area restaurants advertise for about \$20; that Galileo's
7 decision to enter into the arrangement was based solely on commercial and economic
8 considerations and was not in any way related to political considerations; and that Galileo
9 would have provided the same arrangement to non-political patrons willing and able to
10 commit to the number of dinners agreed upon by Mr. Delk.

11 However, a news article attached to the complaint contained the following quote
12 of Michael Niyera, then Galileo's manager:

13 I cannot just give this to everyone who comes to the
14 restaurant; special events cannot do this. You have to
15 become a friend of the house. Only 15 to 20 of the
16 restaurant's other customers would be eligible for such a
17 price.
18

19 See Kathleen Day, "Influence by volume; Freddie Mac lobbyist got a big discount on
20 GOP fundraising dinners at Galileo," *Washington Post* (Aug. 4, 2003). The article also
21 reported that several lobbyists who attended one or more of Mr. Delk's dinners stated that
22 they did not notice any difference between the fundraising dinner and what they typically
23 receive when they order from Galileo's regular menu.

24 By letter dated March 30, 2004, the Office of General Counsel sought voluntary
25 clarification from Galileo concerning its representation that the fundraising dinners were
26 comparable to its menu during Restaurant Week. Specifically, the Office sought

26044133635

1 clarification on whether the menus and prices for the fundraising events were the same as
2 or comparable to the menus and prices offered by Galileo during D.C. Restaurant week
3 for either lunch or dinner and whether Galileo had ever offered the same or comparable
4 menu used in the fundraising events at the same price to non-political customers.
5 Moreover, the Office asked that in clarifying its response to the complaint, Galileo
6 provide as much detail as possible, including identifying the room in which the
7 fundraisers were held.²

8 In a cursory response, Galileo stated that it offers a daily fixed-price 3-course
9 lunch for \$20.00 per person; however, it failed to clarify whether the menu provided
10 during the fundraising dinners at issue was the same as or comparable to that menu or
11 whether Galileo ever offered a comparable arrangement to non-political customers.
12 Notably, the fact that Galileo offers a daily fixed-price 3-course *lunch* for \$20 per person,
13 exclusive of wine, tax and tip, does not address the issue of whether the discount Galileo
14 gave on the fundraising *dinners*, which included wine, is within the permissible range
15 provided in 11 C.F.R. § 114.1(a)(2)(v). Galileo also failed to identify the room in which
16 the dinners were held.

17 At this time, questions remain as to the value of the menu items served at the
18 fundraising dinners, how many people attended, the rooms used for the events, and
19 whether a comparable arrangement was available to other customers. The information
20 available suggests that Galileo may have granted a highly lucrative discount on these
21 fundraisers, particularly given that these events included dinner, beverages (including

² The location of the fundraising dinners is significant because, according to a news article, Galileo houses three separate – and differently priced – restaurants under one roof. *See Washingtonian*, Trickle-Down Ingenuity at Galileo's Bar (April 2004). Among these are the "Laboratoria del Galileo," located in the back of the restaurant, where dinners are reportedly offered for \$125-a-person. *Id.*

- 1 wine), tax and tip at an otherwise very expensive restaurant for only \$25 per person.
- 2 Based on the foregoing, there is reason to believe Galileo Restaurant violated 2 U.S.C.
- 3 § 441b(a).

26044133637